

## Exhibit 4

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

DIVERSI-PLAST PRODUCTS, INC., a )  
Minnesota Corporation, )

Plaintiff, )

v. )

BATTENS PLUS, INC., a California )  
Corporation, )

Defendant. )

Case No.  
2:04CV01005 PGC

CONFIDENTIAL  
ATTORNEYS' EYES ONLY

BATTENS PLUS, INC., a California )  
Corporation, )

Counterclaimant, )

v. )

DIVERSI-PLAST PRODUCTS, INC., a )  
Minnesota Corporation, )

Counter-Defendant. )

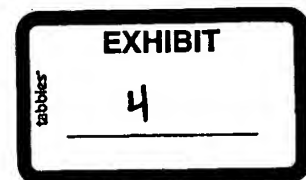
DEPOSITION OF  
GARY URBANSKI  
MINNEAPOLIS, MINNESOTA  
THURSDAY, NOVEMBER 17, 2005

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REPORTED BY: ROLLIE M. TROUP, COURT REPORTER

FILE NO.: 9F09A74



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\_\_\_\_\_  
Deposition of GARY URBANSKI, taken on  
behalf of the Defendant and Counterclaimant, at the  
law firm of Patterson, Thuente, Skaar & Christensen,  
P.A., 80 South Eighth Street, Suite 4800, Minneapolis,  
Minnesota, commencing at approximately 10:00 a.m.,  
Thursday, November 17, 2005, before Rollie M. Troup,  
Court Reporter and Notary Public.

APPEARANCES

ON BEHALF OF THE PLAINTIFF/COUNTER-DEFENDANT:

MATTHEW T. MACARI, ATTORNEY AT LAW  
PATTERSON, THUENTE, SKAAR & CHRISTENSEN, P.A.  
4800 IDS Center  
80 South Eighth Street  
Minneapolis, Minnesota 55402-2100  
(612) 349-5759  
macari@ptslaw.com

ON BEHALF OF THE DEFENDANT/COUNTERCLAIMANT

MICHAEL S. WILCOX, ATTORNEY AT LAW  
McDONOUGH HOLLAND & ALLEN P.C.  
555 Capitol Mall  
Suite 950  
Sacramento, California 95814-4692  
(916) 444-3900  
mwilcox@mhalaw.com

1 specifically I don't know.

2 BY MR. WILCOX:

3 Q Would that prototype still exist?

4 A I don't know.

5 Q Who would know that?

6 A I am not sure. I'm not sure who would.

7 Q I'm going to go to Topic Number 3, which has to  
8 do with prior art. Do you know what prior art  
9 is?

10 A Not the legal definition, no.

11 Q Can you tell me your understanding of what it is?  
12 It doesn't have to be a legal definition.

13 A By the wording in that, I would say something in  
14 the marketplace that -- prior to a patent being  
15 issued.

16 Q Do you know if there was a document or something,  
17 as you call it in the marketplace, before this  
18 patent being issued that would be prior art?

19 A A document in regards to?

20 Q That might show the invention of the patent in  
21 suit or something like it.

22 MR. MACARI: Objection, asks for a legal  
23 conclusion.

24 THE WITNESS: When you're asking, you  
25 know, what, when, I guess I need a little bit of

1 clarity there.

2 BY MR. WILCOX:

3 Q Do you know of any documents that have been  
4 called prior art documents?

5 MR. MACARI: Objection, vague.

6 THE WITNESS: I guess I don't know.

7 BY MR. WILCOX:

8 Q Has anybody ever pointed a document out to you  
9 and called it prior art for this patent?

10 A Again, a document when and who and what and what  
11 relation, not that I am aware of.

12 Q Before the filing of this patent did  
13 Diversi-Plast investigate what kinds of patents  
14 were out there?

15 A I guess, when you mean investigate, what would  
16 that mean?

17 Q Did it hire companies to find out what kinds of  
18 patents were out there?

19 A We would have, from a marketing perspective, try  
20 to understand the market. From a true patent  
21 situation we would have had our patent attorneys  
22 help us look for anything resembling a patent I  
23 suppose.

24 Q Did Diversi-Plast undertake a literature search  
25 for documents that might be out there that would

1 tell you what pre-existed the invention?

2 A Literature search -- and I guess I'm not sure  
3 what you reference by "literature search".

4 Q Articles, a search of any articles that might be  
5 out there relating to battens?

6 A I don't know, and I don't think there was an  
7 official term used as literature search.

8 Q Would there have been a search of the patents  
9 relating to battens, was that done?

10 MR. MACARI: I'm going to object. I  
11 just want to clarify. You're asking about  
12 Diversi-Plast or its attorneys?

13 MR. WILCOX: I'm asking about  
14 Diversi-Plast.

15 THE WITNESS: We would have utilized our  
16 patent attorneys to help us look for prior  
17 patents.

18 MR. WILCOX: And, just to get the  
19 objection on the record, did your patent  
20 attorneys look?

21 MR. MACARI: I will object. Actually,  
22 I'll let him answer to the extent he knows, but  
23 I'll ask that you not disclose any communications  
24 you had with your patent counsel.

25 THE WITNESS: At that time I don't know,

1 because I wouldn't have been involved in those  
2 discussions.

3 BY MR. WILCOX:

4 Q Are you -- okay, you wouldn't know, so you can't  
5 answer that question?

6 A Yes.

7 Q I'm going to hand you a document Bates labeled  
8 DP 613 through DP 614, and we will mark this  
9 Exhibit Number 10.

10 (Exhibit Number 10 marked.)

11 BY MR. WILCOX:

12 Q Have you seen this document before?

13 A Yes, I have.

14 Q This document is a letter dated October 5, 2001;  
15 is that correct?

16 A Yes, it is.

17 Q It is from Mr. Sorenson of Aspen Research; is  
18 that correct?

19 A That is correct.

20 Q And it's to you?

21 A That is correct.

22 Q And I want to direct you to the paragraph  
23 entitled Literature Search. Can you look over  
24 that paragraph?

25 A (Witness complies.) Okay.



1 Q Now, this paragraph refers to a literature search  
2 that was going to be done by Aspen Research at  
3 your request; is that correct?

4 A A quotation.

5 Q Was this literature search done?

6 A No, not with Aspen Research, no.

7 Q Why were you looking to have a literature search  
8 done?

9 A I don't recall specifically. This was sometime  
10 after our batten patent had been issued and I  
11 believe we were in the process of just trying to  
12 continue to understand marketing and how to  
13 approach the market is what my recollection is.

14 Q You said that Aspen Research did not do this  
15 literature search. Did another company do this?

16 A No.

17 Q So you never had this literature search done?

18 A Not as stated here, no.

19 Q Did you have any other kind of literature search  
20 done?

21 A Not under that term, no.

22 Q What term might a related search --

23 A We would have done some market research  
24 throughout the patent as we looked for  
25 literature -- or, looked to learn more about the

1 market.

2 Q Did this occur before the filing of the patent  
3 application?

4 MR. MACARI: Objection, lack of  
5 foundation.

6 THE WITNESS: I don't recall. When we  
7 were in the process of the patent we were trying  
8 to learn market information, we were in the  
9 process of developing the batten product.

10 BY MR. WILCOX:

11 Q In the process of doing this market research were  
12 documents dating from prior to December 1998  
13 obtained?

14 A There may have been.

15 Q Would those documents have related to the  
16 structure of different kinds of battens?

17 A It depends. I guess, what do you mean by  
18 structure?

19 Q The shape of a batten, how a batten is built,  
20 what it is made of?

21 A We would have some things based on -- yes, on the  
22 wood battens, yes.

23 Q Who would have been in charge of conducting this  
24 kind of research?

25 A In charge I'm not sure. I think it would have

1           been something we would have been looking for. I  
2           don't know that there's anybody in charge of it.

3       Q     Who would have participated?

4       A     It would have been probably myself and perhaps  
5           one of the designers. I don't recall.

6       Q     Can you name names as far as one of the  
7           designers?

8       A     I don't know if Mark Stoll would have been  
9           involved in that or Dan Jacobson or not. I don't  
10          recall.

11      Q     If such a document was found, where would it have  
12          been stored?

13      A     In the person who would have discovered it.

14      Q     Are documents just normally stored in files in  
15          people's offices?

16      A     Correct.

17      Q     Were such -- were those files reviewed during the  
18          document production?

19      A     Yes.

20      Q     So, any document related to the structure of a  
21          batten dated before 1998 would have been  
22          produced?

23                   MR. MACARI: Objection, misstates the  
24          record.

25                   THE WITNESS: If there was something

1           that had been in there, perhaps, but I'm not sure  
2           that there was or is, but it would have been  
3           produced, yes.

4   BY MR. WILCOX:

5   Q       Documents such as this letter that discuss  
6           literature searches, do you know if there are any  
7           other letters discussing a literature search or  
8           that kind of a search under another name?

9   A       I don't know.

10  Q       Who would know that?

11  A       I don't know.

12  Q       When was the first time that Diversi-Plast  
13           attempted to sell the patented batten?

14                   MR. MACARI: Objection, vague and asks  
15           for a legal conclusion.

16                   THE WITNESS: When you say patented  
17           batten?

18  BY MR. WILCOX:

19  Q       Well, there was -- okay. We said there was a  
20           prototype developed.

21  A       Correct.

22  Q       Did anyone ever attempt to offer that prototype  
23           for sale?

24  A       We had several prototype versions, and at some  
25           point the prototype would have been made

1 A We decided to keep an eye on the situation to see  
2 if this company did come out with any information  
3 or come out with a product that was being  
4 marketed, and that was -- at that point in time  
5 we said we'll just wait and see.

6 Q Now, we have gotten to a complaint at some point,  
7 so what happened after that?

8 MR. MACARI: I'll object to the  
9 extent -- I'll keep reminding you of this  
10 objection that you can disclose what you've done  
11 internally. Do not disclose any -- I advise you  
12 not to disclose any attorney/client information  
13 or instructions from your attorneys with regard  
14 to this question.

15 THE WITNESS: Okay. We began hearing or  
16 seeing -- hearing would probably be the more  
17 accurate term, that there was a company out there  
18 called Battens Plus selling a corrugated plastic  
19 batten.

20 BY MR. WILCOX:

21 Q Who did you hear that from?

22 A We would have heard it -- the only one that would  
23 come to mind specifically would be one of our  
24 independent rep firms.

25 Q What's the name of that company?

1 A Sierra Coast Products.

2 Q What did you hear from Sierra Coast Products?

3 A That there is a company called Battens Plus  
4 selling a corrugated batten product in the  
5 marketplace.

6 Q Who at Sierra Coast Products would have told you  
7 that?

8 A I believe it would have been Lucas Hanson.

9 Q Did he tell you anything else about this product?

10 MR. MACARI: Objection, vague.

11 BY MR. WILCOX:

12 Q Did he tell you that this product was competing  
13 with your product?

14 A Yes.

15 Q Does Sierra Coast Products sell your products?

16 A They represent our products, yes.

17 Q Do they also represent Battens Plus?

18 A No, I don't believe so.

19 Q So they were running into competition from this  
20 other batten?

21 A Correct.

22 Q About what time period was this?

23 A I would say probably the middle of 2003.

24 Q So now you've learned about the Battens Plus  
25 company. What happened next?